

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 11 of 1986

in

SPECIAL CIVIL APPLICATION No 726 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASSISTANT PUBLIC PROSECUTORS ASSOCIATION

Versus

STATE OF GUJARAT

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Appearance:

MR PM RAVAL for Appellants

MR B.Y. MANKAD for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 03/12/98

ORAL JUDGEMENT

Per Patel,J.

The Assistant Public Prosecutors' association ,Gujarat State and the Vice-president of the aforesaid Association have preferred this appeal against the order of dismissal of Special civil application No. 726 of 1985 decided by the learned Single judge on April 1,1985.

From the prayer clause , it appears that two grievances were made, viz. (i) quashing and setting aside the circular dated 27.12.1984 vide Annexure 'A' and (ii) to restore telephone facility to the office of the Senior Public Prosecutor, Metropolitan Magistrate court at Ahmedabad. On merits ,the learned Single Judge dismissed the special civil application.It appears that by circular dated 27.12.1984, the Assistant Public Prosecutors were required to submit monthly diaries to the concerned District Magistrate of the district. A copy of the diary indicates that the Assistant Public Prosecutors were required to indicate pending cases on a particular day and the cases received during the quarter .It was also necessary to mention the number of cases disposed of during the quarter and number of cases pending at the end of a quarter.They were also required to forward the particulars regarding disposal of cases and percentage (punishment, compromise, discharge) and a special note, if any, by way of remarks.

The Assistant public Prosecutors are conducting matters on behalf of the State in courts of Judicial Magistrates or Metropolitan Magistrates and the State Government has to appoint under section 25 of Criminal Procedure Code. 1973,in every district, Assistant public prosecutors for conducting prosecutions in courts of the Magistrates, Thus, Assistant public prosecutor is in charge of the prosecution. As the State Government is the appointing authority, they cannot be controlled either administratively or disciplinary by the police department. However, the District Magistrate is empowered to appoint, in case the Assistant public prosecutor is not available for the purpose of any particular case, any person as Assistant public prosecutor in charge of that case. This can be done in exceptional circumstances.

The State is responsible for classifying the offenders and the police department is required to investigate into the crimes and to submit charge sheet against the offender if there is prima facie case. The cases are to be conducted by the Assistant public prosecutors and, therefore, the police officer who has investigated the case is obviously required to report to the Assistant

public prosecutor at the commencement of a trial. At the same time, the appointing authority being the State, the Commissioner of Police or District Superintendent of Police cannot call upon the Assistant public prosecutors to furnish details, but at the same time, as observed rightly by the learned Single Judge, there cannot be any objection in calling upon the Assistant public prosecutors to submit details to the District Magistrate who is a representative of Government at the district level. It is for this Assistant public prosecutor to communicate the State Government about flow of cases, disposal of cases and pendency of cases. On the basis of this report, the District Magistrate and consequently the State will have an idea about the need of Assistant public prosecutors, courts and other relevant staff. From this point of view, it cannot be said that this information increases the work load. He is required to send details of cases conducted, details of cases received. Thus, in a sense, this serves dual purpose.

A contention was raised that Public prosecutors in Ahmedabad (rural) at Mirzapur, City civil court, Ahmedabad and High court were not required to submit their diaries. The learned Single Judge has pointed out that the nature of work is quite different and merely because public prosecutors are not called upon to submit the diaries, the Assistant public prosecutors as a class, cannot say that diaries will not be furnished. The learned Single Judge pointed out that about the staff and facilities, representation may be made to the State Government. We are sure that if proper representation is made, the State Government is bound to consider the same.

With regard to the telephone facility at the office of the Senior Public Prosecutor at Metropolitan Magistrate court at Ahmedabad, the facility was provided through police exchange. It is required to be noted that the Assistant Public Prosecutors in charge of the cases are required to instruct police officers in the police stations, and for the sake of convenience, this facility is made available, we fail to understand as to what has compelled the State to discontinue this facility. Merely because they are not under the control of the Police Commissioner, the facility could not have been withdrawn. The facility which was provided was for communicating urgent messages to the police stations. It was not an independent telephone line but was a line working through police exchange.

Mr. Mankad could not give any reasonable explanation for withdrawing this facility. It may be noted that when

telephone is operating from police exchange,, there is no question of misuse of the telephone . All the police stations, police chowkies and important police officers are connected directly through the police exchange and this facility was provided without additional expenses. They will be in a position to contact the persons concerned or police stations or police chowkies , as the case may be. The Assistant public prosecutor while communicating his remarks will be able to state in his report if despite telephone communication sent through police exchange directly, the police officer has not remained present before the court and it is for the District Magistrate , in consultation with the Police Commissioner, to do the needful in the matter. This was ,really speaking, for immediate communication for the police department and not for any personal use of the telephone. In our opinion, the telephone line was provided , keeping in view, the real need. It was not provided for the purpose of connecting senior Public Prosecutor's office directly with the world at large and for his personal purpose. It is under the circumstances which we have referred hereinabove , we direct the State Government to provide the telephone facility as it was provided in the past and looking to the workload of court and Assistant public prosecutors , if need arises, there is nothing wrong to supply two lines and we leave it to the Police Commissioner.

Consequently, the appeal is partly allowed . In view of the aforesaid observations, the relief in terms of para 12 (B) of Special civil application, is granted, with no order as to costs. The telephone facility shall be provided forthwith.

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